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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,731	01/28/2004	Gregory H. Fasullo	VPI 2867000	3468
21909	7590	08/23/2006	EXAMINER	
CARR LLP 670 FOUNDERS SQUARE 900 JACKSON STREET DALLAS, TX 75202			CHERRY, STEPHEN J	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/766,731	Applicant(s) FASULLO ET AL.	
	Examiner Stephen J. Cherry	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 14-21, 23-29, 34-36 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 14-20 and 23-29 is/are allowed.
- 6) ☒ Claim(s) 21, 34-36 and 41-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1-28-2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21, 34-36, and 41-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims merely recite functional steps without performing a tangible result, therefore they are directed to non-statutory subject matter. Additionally, although claim 21 is directed to an apparatus, the claimed apparatus comprises a processing unit which performs steps that produce no tangible result, therefore it is directed to non-statutory subject matter.

Allowable Subject Matter

Claims 1-7, 14-20, and 23-29 are allowed.

The following is an examiner's statement of reasons for allowance:

Claim 1 recites, "wherein the processing unit at least evaluates a comparison of the energy output to the fan with the angular speed of the fan at a first time and a second time; and at least compares the comparison at the first time with the comparison at the second time to determine fan failure or wear". This feature, in combination with additional claimed structure, overcomes the prior art of record.

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Claim 14 recites, "evaluates a comparison of the energy output to the fan with the angular speed of the fan at a first time and a second time; and at least compares the comparison at the first time with the comparison at the second time to determine fan failure or wear". This feature, in combination with additional claimed structure, overcomes the prior art of record.

Claim 23 recites, "evaluates a comparison of the energy output to the fan with the angular speed of the fan at a first time and a second time; and at least compares the comparison at the first time with the comparison at the second time to determine fan failure or wear". This feature, in combination with additional claimed structure, overcomes the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments, filed 5-8-2006, with respect to the rejections of claims 1-7, 14-21, 23-29, 34-36, and 41-43 under 35 USC 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of 35 USC 101 of claims 21, 34-36, and 41-43.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Cherry whose telephone number is (571) 272-2272. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SJC


John Barlow
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